

City of Olympia
Public Works Department
P.O. Box 1967
Olympia, WA 98507-1967

Document Title(s) INTERLOCAL AGREEMENT - PHASE V
Reference Number(s) of Document:
Grantor(s) (last name first, then first name and initials) CITY OF LACEY, a non-charter, optional municipal code city of the State of Washington CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington CITY OF YELM, a non-charter, optional municipal code city of the State of Washington
Grantee(s) (last name first, then first name and initials) CITY OF LACEY, a non-charter, optional municipal code city of the State of Washington CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington CITY OF YELM, a non-charter, optional municipal code city of the State of Washington
Legal Description (e.g., lot, block, plat or section, township, range) Section 29 / 30 Township 16 Range 2E Survey TR B Document 4183811 29 / 30 16 2E Additional legal is on page of attached document
Assessor's Property Tax Parcel Number 22629220202
Address:



When recorded return to:
City of Olympia
PO Box 1967
Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY AND YELM
(THE CITIES)
FOR IMPLEMENTING DESCHUTES WATER RIGHTS
MITIGATION STRATEGY – PHASE V**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

Whereas, the Cities have submitted applications for water rights to Washington Department of Ecology (WDOE); and

Whereas, in order to secure approvals of those water rights, the Cities have cooperatively developed a mitigation strategy for the Deschutes River that has been accepted by the WDOE; and

Whereas, the mitigation strategy includes restoration of 200 acres of farmland jointly purchased by the Cities in the Deschutes River watershed (Deschutes River property). Habitat restoration mitigation actions will take place over several years on the property and include: riparian planting along 1 mile of river frontage, stream channel and wetland restoration, and ongoing land management responsibilities; and

Whereas, by Interlocal Agreement effective November 14, 2007, the Cities completed Phase I of a water rights acquisition strategy by identifying potential water rights for acquisition; and

Whereas, by amended Interlocal Agreement effective January 19, 2010, the Cities completed Phase II of a water rights acquisition strategy for mitigation purposes by jointly acquiring water rights and property in the Deschutes River basin and developing a habitat restoration assessment for that property; and

Whereas, Olympia's water rights were issued by WDOE in December 2011 and Lacey's water rights were issued by May 2012, and Yelm's water right was approved but appealed in November 2011; and

Whereas, through Interlocal Agreement effective August 23, 2012, the Cities completed Phase III of the Deschutes Mitigation Strategy by retiring water rights; fencing the Deschutes River property; developing a 60% design for habitat restoration mitigation actions, project schedule and costs for habitat restoration mitigation actions identified in the cities' mitigation plans; and contracting for the services of a project manager to coordinate and lead this effort; and

Whereas, through a letter of agreement dated October 30, 2014 the City of Olympia planted a 50-foot wide riparian buffer along the Deschutes River on the Deschutes River property; and

Whereas, through Interlocal Agreement effective April 27, 2015, the Cities completed Phase IV of the Deschutes Mitigation Strategy by advancing to 100% the design and bid specifications for the habitat enhancement projects that were designed to 60% under Phase III, applying for and obtaining necessary project permits, and hiring consultants to help support this effort and to oversee ongoing property management; and

Whereas, on October 8, 2015, WDOE's approval of Yelm's water right application was overturned by the Washington State Supreme Court thereby eliminating any immediate benefit Yelm would receive from habitat enhancement mitigation projects but not diminishing Yelm's interests as a joint owner of the Deschutes River property; and

Whereas, the Cities of Olympia and Lacey are required as a condition of their water rights to continue implementation of the Deschutes Mitigation Strategy by constructing habitat restoration projects designed under Phase IV, by completing riparian revegetation projects described in approved mitigation plans, and by hiring consultants to support this effort and to oversee ongoing property management; and

Whereas, the Cities may be doing other restoration work on the Deschutes River Farm property not related to this Interlocal Agreement, but through a Memorandum of Understanding (MOU) with the Squaxin Island Tribe signed November 29, 2011. In this MOU the cities have agreed to form the Budd/Deschutes Watershed Environmental Stewardship Coalition and provide additional funding for habitat restoration activities; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cities agree as follows:

I. Purpose/Objective

The Cities have jointly purchased property on the Deschutes River for the purpose of cooperatively implementing the Deschutes Mitigation strategy that was approved by WDOE. Implementation of that plan is required by water rights issued to the Cities of Olympia (ROEs CS2-SWC8030, CS2-01105, CS2-SWP10191) and Lacey (ROEs G2-29165, G2-29304, G2-30250, G2-30251, G2-30248, G2-30249).

The purpose of this Agreement is to allow the Cities of Olympia and Lacey to continue with implementation of projects identified in their mitigation plans in order to meet conditions of final water rights approval by WDOE, to make provisions for the future participation of the City of Yelm in mitigation plan implementation in the event the City of Yelm receives approval of a water right from WDOE conditioned with mitigation provisions, and to outline the Cities of Olympia, Lacey and Yelm responsibilities as joint owners of the Deschutes River property.

II. Scope of Agreement/Work

City of Yelm

The City of Yelm will not be a party to the construction, monitoring and management of the habitat restoration mitigation actions described in this Agreement. However, Yelm agrees to reimburse Lacey and Olympia for its pro-rata share of the construction, monitoring and management costs as described in Sections IV and V of this Agreement if mitigation credit for these habitat restoration mitigation actions is allowed in the future.

As a joint landowner, the City of Yelm agrees to participate in property management and stewardship planning expenses as described in Section IV.c of this Agreement. The City of Yelm agrees that the Cities of Olympia and Lacey will jointly select a consultant, organization, or agency to conduct property management and stewardship activities and enter into a professional service agreement with the selected consultant, organization or agency as described in Section II of this Agreement and that such consultant, organization, or agency selected may perform other habitat restoration mitigation activities for which the City of Yelm has not yet agreed to cost-share.

As a joint landowner, the City of Yelm agrees to coordinate with the Cities of Olympia and Lacey on future long term management and stewardship decisions for the Deschutes River property through involvement in a separate agreement following the completion of the habitat restoration mitigation construction work jointly carried out by the Cities of Olympia and Lacey.

The City of Yelm acknowledges that the City of Olympia managed planting of the 50-foot riparian buffer, including payment of all costs, for the mutual benefit of the Cities and agrees to participate in cost sharing of this expense as described in sections IV and V of this Agreement.

The Cities of Olympia and Lacey

The Cities of Olympia and Lacey will jointly install, construct and monitor habitat restoration mitigation actions as a condition of their water rights.

This Agreement provides authority for the City Managers of the Cities of Olympia and Lacey to enter into the necessary agreements to accomplish all tasks necessary for completion of Phase V work. Specific Phase V work to be accomplished under this agreement includes contracting for construction services of habitat restoration mitigation projects, construction project management, riparian and wetland area planting and maintenance through 2020 and property management activities through 2020.

The Cities of Olympia and Lacey agree to jointly engage the services of one or more consultants, contractors, organizations, or agencies to assist the Cities in services related to implementation of the Deschutes Mitigation strategy as approved by WDOE.

The Cities of Olympia and Lacey will jointly enter into a professional services agreement with one or more consultants, organizations, or agencies agreed upon by the parties for Phase V development and implementation. Work to be included under a professional services agreement may include construction and inspection of restoration projects, riparian monitoring and maintenance, project management, permitting assistance, property management activities, and legal analysis and review services.

The Cities of Olympia and Lacey will jointly enter into a construction contract with one or more contractor agreed upon by the parties for Phase V construction of habitat restoration mitigation projects, and riparian buffer and wetland planting, as needed.

The Cities of Olympia and Lacey will jointly direct the work of contractors, consultants, organizations, or agencies through a consensus-based decision making process. Firms providing professional services will be chosen through the standard selection process for professional services as required by the laws of the State of Washington and the Cities of Olympia and Lacey will jointly develop and issue the Request for Qualifications (RFQ), including the general scope and nature of the project or work, when required by law for contracted work and will make a unified recommendation for selection of the firm. Construction contracts shall be awarded to the lowest, responsive, qualified bidder.

The selection process for professional services shall include one or more project managers or engineers familiar with the municipal public work construction process. In

addition to other criteria as may be agreed to by the Cities of Olympia and Lacey, consultants shall be evaluated on their ability to provide municipal construction support which may include but not be limited to bid award support, inspections, documentation, project management, and submittal review. Once the consultants are selected, the Cities of Olympia and Lacey shall coordinate with the selected consultant(s) to develop any final Scope of Work and Professional Services Agreements amenable to each Party.

In recognition that one City will need to approve change orders, make payments, and keep track of insurance, bond and other legal requirements, the firm that is hired will be instructed to use Olympia's project specifications with the Olympia City Engineer or designee as the approver of change orders, pay estimates and related construction decisions.

This agreement also allows the Cities of Olympia and Lacey to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The Cities of Olympia and Lacey may also jointly hire legal counsel on issues related to property management and habitat enhancement for the purpose of mitigation and other related topics. Legal advice provided to the Cities of Olympia and Lacey shall be considered attorney client privileged not subject to disclosure.

The Cities of Olympia, Lacey and Yelm

Within 30 days of receiving approval of a water right, with no appeals filed, from WDOE, conditioned with mitigation provisions, the City of Yelm will inform the Cities of Olympia and Lacey in writing of its desire to participate in construction and monitoring of habitat restoration mitigation activities at the Deschutes River property, including costs. Following receipt of such notice, the Cities of Olympia and Lacey will coordinate project decisions and activities with the City of Yelm consistent with section II of this Agreement, provided that if a construction and/or professional services contract is in place, such a contract(s) will not be amended to include the City of Yelm.

As joint land owners, the Cities of Olympia, Lacey and Yelm agree to share in property management and stewardship planning expenses as described in Section IV.c of this Agreement. The City of Yelm agrees that the Cities of Olympia and Lacey will jointly select a consultant, organization, or agency to conduct property management and stewardship activities and enter into a professional service agreement with the selected consultant, organization or agency as described in Section II of this Agreement and that such consultant, organization, or agency selected may perform other habitat restoration mitigation work for which the City of Yelm has not yet agreed to cost-share. The Cities of Olympia and Lacey agree that any final Scope of Work for professional services shall

separate tasks and budgets for property management and stewardship activities from any other tasks to be accomplished under the professional services agreement.

The Cities of Olympia, Lacey and Yelm will accomplish future long term management and stewardship (e.g. land conservancy trust) of the property through a separate agreement after habitat restoration construction work is completed.

III. Property Access

This agreement grants the Cities and their contractors, individually or in collaboration, access to the Deschutes River property to install, construct and monitor habitat restoration mitigation projects outlined in the Deschutes Mitigation Strategy and to perform property management activities.

IV. Cost Sharing

- a. Construction and Monitoring of Habitat Restoration Mitigation Actions
 - i. The Cities of Olympia and Lacey will equally divide costs for construction and monitoring of habitat restoration mitigation actions. Total costs for such services under this agreement are not to exceed \$1,235,365 outlined as follows:
 - 1. Wetland Habitat Restoration Construction \$ 759,515
 - 2. 50- to 200-foot Riparian and Wetland Buffer Planting, Monitoring and Management \$ 475,850
 - ii. In the event the City of Yelm informs the Cities of Olympia and Lacey in writing of its desire to participate in construction and monitoring of habitat restoration mitigation actions at the Deschutes River property, the City of Yelm will immediately begin to share equally in the construction and monitoring of habitat restoration mitigation actions costs listed above not yet incurred as of the date of the City of Yelm's written notice consistent with Section V.a and Section V.c of this Agreement. Expenditures incurred prior to the date of the City of Yelm's notice will be reimbursed by the City of Yelm to the City of Olympia and the City of Lacey individually as described in Section V.d of this Agreement.
- b. 50' Riparian Buffer Planting

This Phase V Agreement confirms that the City of Olympia managed planting of the 50-foot riparian buffer, including payment of all costs, for the mutual benefit of the Cities. The Cities will equally divide costs for planting of the 50-foot riparian buffer in accordance with the letter of agreement dated October 30, 2014. Total costs to be divided shall not exceed \$31,372.22.

c. **Property Management Expenses**

The Cities of Olympia, Lacey and Yelm agree to equally divide costs for property management expenses. Property management work may include the removal of material (ie TV's, tires) and fences from the property, weed control, installation of new wire fencing, and pasture management through 2020. Prior to authorizing material or fence removal or fence construction, the Cities of Olympia and Lacey agree to consult with the City of Yelm. Total costs for such services under this agreement are not to exceed \$133,997 as outlined as follows:

Stewardship Planning	\$73,308
Pasture Management	\$60,688

d. **Future Stewardship and Property Management.**

Costs for future stewardship and property management work will be established in a future agreement based on monitoring work conducted in this Agreement. Proportionate cost sharing shall be determined at that time.

V. Method of Payment

a. **Professional Services – Habitat Restoration Mitigation Actions**

- i. Consultants will invoice each Olympia and Lacey separately on a monthly basis.
- ii. Payment will be made separately by each City to the consultants upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

b. **Professional Services – Property Management Activities**

- i. Consultants will invoice each Olympia, Lacey and Yelm separately on a monthly basis.
- ii. Payment will be made separately by each City to the consultants upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

c. **Construction Services**

- i. Olympia will manage the construction contract for the mutual benefit of both itself and the City of Lacey, and will invoice the City of Lacey its half share of costs based on actual contract expenses plus its half share of Olympia's administrative costs. The invoice will provide a detailed breakdown of costs. Lacey will pay its share of the undisputed items within thirty (30) days of receipt of invoices from Olympia.

- d. Pro Rata Reimbursement of Professional Services-Habitat Restoration Mitigation Actions and Construction Services by the City of Yelm
 - i. Within 90 days of receiving written notice from the City of Yelm of its desire to participate in construction and habitat restoration monitoring actions at the Deschutes River property, the City of Olympia will prepare an invoice of the professional and construction services expenditures detailed in Section IV.a of this Agreement incurred prior to the date written notice was received from the City of Yelm. The invoice will provide a detailed breakdown of costs and the reimbursement amount due to each the City of Olympia and the City of Lacey. The City of Yelm will pay the undisputed amount due individually to Olympia and Lacey within thirty (30) days of receipt of the invoice from Olympia.
- e. 50' Riparian Buffer Planting
 - i. Olympia managed planting of the 50-foot riparian buffer for the mutual benefit of the Cities. Olympia will invoice the City of Lacey and the City of Yelm their share of costs based on actual expenses. The invoice will provide a detailed breakdown of costs. Lacey and Yelm will pay their share of the undisputed items within thirty (30) days of receipt of invoices from Olympia.

VI. Indemnification & Insurance

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

VII. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VIII. Duration of Agreement

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

IX. Dispute Resolution

- a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general

nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

- b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will equally share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.
- c. Step Three – Litigation. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

X. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

XI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

XII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Cities and supersedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XIII. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

XIV. Counterparts

This Agreement may be executed in counterparts, and all such counterparts once so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the parties. A faxed or email copy of an original signature shall be deemed to have the same force and effect as the original signature.

XV. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Susan Clark, Senior Planner
Re: Water Rights Mitigation/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Mitigation/Deschutes Basin
420 College St SE
Lacey, WA 98503

CITY OF YELM:

Attn: Chad Bedlington, Public Works Director
Re: Water Rights Mitigation/Deschutes Basin
105 Yelm Ave. W
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA


Steven R. Hall, City Manager

Date: 8.15.2017

Approved as to form:


Darren Nienaber, Deputy City Attorney

CITY OF YELM


JW Foster, Mayor

Date:

9-12-17

Approved as to form:


P. Stephen DiJulio, Attorney

**COPY SUBMITTED
FOR RECORDING**

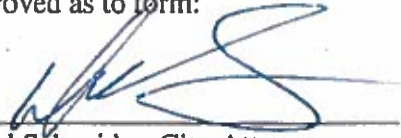
CITY OF LACEY



Scott Spence, City Manager

Date: 7/27/2017

Approved as to form:



David Schneider, City Attorney

When recorded return to:

City of Olympia

PO Box 1967

Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY AND YELM
FOR IMPLEMENTING DESCHUTES WATER RIGHTS
MITIGATION STRATEGY – PHASE IV**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

Whereas, the Cities of Olympia and Lacey have received approval for water rights from the Department of Ecology and Yelm's application is approved, pending an appeal; and

Whereas, in order to secure approvals of those water rights, the Cities have cooperatively developed a mitigation strategy for the Deschutes River that has been accepted by the Washington Department of Ecology; and

Whereas, the mitigation strategy includes restoration of 200 acres of farmland jointly purchased by the cities in the Deschutes River watershed. Restoration projects will take place over several years and include: riparian planting along 1 mile of river frontage, stream channel and wetland restoration, and ongoing land management responsibilities; and

Whereas, by Interlocal Agreement effective November 14, 2007, the Cities completed Phase I of a water rights acquisition strategy by identifying potential water rights for acquisition; and

Whereas, by amended Interlocal Agreement effective January 19, 2010, the Cities completed Phase II of a water rights acquisition strategy for mitigation purposes by jointly acquiring water rights and property in the Deschutes River basin and developing a habitat restoration assessment for that property; and

Whereas, through Interlocal Agreement effective August 23, 2012, the Cities completed Phase III of the Deschutes Mitigation Strategy by retiring water rights; fencing the Deschutes River property; developing a 60% design, project schedule and costs for habitat restoration projects identified in the cities' mitigation plans; and contracting for the services of a project manager to coordinate and lead this effort; and

Whereas, the cities will continue implementation of the Deschutes Mitigation Strategy in Phase IV by completing the design and bid specifications for the habitat enhancement projects that were designed to 60% under Phase III, applying for and obtaining necessary project permits, and hiring consultants to help support this effort and to oversee ongoing property management. Authorization for construction of designed restoration projects will be accomplished through a separate agreement after design work is completed; and

Whereas, the cities may be doing other restoration work on the Deschutes River Farm property not related to this Interlocal Agreement, but through a Memorandum of Understanding (MOU) with the Squaxin Island Tribe signed November 29, 2011. In this MOU the cities have agreed to form the Budd/Deschutes Watershed Environmental Stewardship Coalition and provide additional funding for habitat restoration activities; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cities of Lacey, Olympia and Yelm (Cities) agree as follows:

I. Purpose/Objective

The Cities have each developed mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister and Yelm sub-basins of the Nisqually River watershed and the Hawks Prairie area of WRIA 13. Within each of these plans, the cities submitted a joint mitigation plan for the Deschutes River Basin to the Washington Department of Ecology (WDOE). The WDOE has issued the Cities of Olympia (CS2-SWC8030, CS2-01105, CS2-SWP10191) and Lacey (ROEs G2-29165, G2-29304, G2-30250, G2-30251, G2-30248, G2-30249) water rights, and has issued the City of Yelm's water rights pending an appeal (ROE G2-29085).

The purpose of this Agreement is to allow the Cities to continue with implementation of projects identified in their mitigation plans and meet conditions of final water rights approval by WDOE.

II. Scope of Agreement/Work

This Agreement provides authority for the City Managers or Mayor of each Party to enter into the necessary agreements to accomplish all tasks necessary for completion of Phase IV work. Specific Phase IV work to be accomplished under this agreement include contracting for project and property management, riparian area maintenance, engineering design and services, and permitting work. Future implementation work will be accomplished through a separate agreement after design work is completed. This agreement also allows the cities to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The Cities agree to jointly engage the services of one or more consultants, organizations, or agencies to assist the Cities in services related to implementation of the Deschutes Mitigation strategy submitted to the WDOE.

The Cities will jointly enter into a professional services agreement with one or more consultants, organizations, or agencies agreed upon by the parties for Phase IV development and implementation, including riparian monitoring and maintenance, habitat enhancement design, project management, permitting assistance, property management activities, and legal analysis and review services as needed.

The Cities will jointly direct the work of the consultant, organization, or agency through a consensus-based decision making process. Consultants will be chosen through the standard selection process for professional services as required by the laws of the State of Washington and the Cities will jointly develop and issue the Request for Qualifications (RFQ), including the general scope and nature of the project or work, when required by law for consulting work and will make a unified recommendation for selection of the firm.

The consultant selection process shall include one or more project managers or engineers familiar with the municipal public work construction process. In addition to other criteria, consultants shall be evaluated on: 1) their ability to produce a complete, final bid-able set of project specifications; and 2) their ability to provide municipal construction support which may include but not be limited to bid award support, inspections, documentation, project management, and submittal review. Once the consultants are selected, the Cities shall coordinate with the consultants to develop any final Scope of Work and Professional Services Agreements amenable to each Party.

In recognition that one City would need to approve change orders, make payments, and keep track of insurance, bond and other legal requirements, the consultant that is hired would be instructed to use Olympia's project specifications with the Olympia City

Engineer or designee as the approver of change orders, pay estimates and related construction decisions.

This agreement also allows the cities to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The cities may also jointly hire legal counsel on issues related to acquisition of water rights, property management and habitat enhancement for the purpose of mitigation and other related topics. Legal advice provided to the cities jointly shall be considered attorney client privileged not subject to disclosure.

III. Implementation Activity Cost Sharing

The Cities will equally contribute to all implementation activities under this Agreement.

IV. Consultant Cost Sharing

The Cities will equally divide costs for consultant services. Total costs for such services under this agreement are not to exceed \$165,800.00. Costs for future Phase V work will be determined as a result of the design work conducted in this Agreement.

V. Method of Payment

- a. Consultants will invoice each City separately on a monthly basis.
- b. Payment will be made separately by each City to the consultants upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

VI. Indemnification & Insurance

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

VII. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VIII. Duration of Agreement

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

IX. Dispute Resolution

a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.

c. Step Three – Litigation. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action.

A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

X. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

XI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

XII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Cities and supersedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XIII. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

XIV. Counterparts

This Agreement may be executed in counterparts, and all such counterparts once so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the parties. A faxed or email copy of an original signature shall be deemed to have the same force and effect as the original signature.

XV. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Laura Keehan, Senior Planner
Re: Water Rights Mitigation/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Mitigation/Deschutes Basin
420 College St SE
Lacey, WA 98503

CITY OF YELM:

Attn: Shelly Badger, City Administrator
Re: Water Rights Mitigation/Deschutes Basin
105 Yelm Ave. W
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

~~CITY OF OLYMPIA~~



Stephen H. Buxbaum, Mayor

Date: 4/14/15

Approved as to form:



Darren Nienaber, Deputy City Attorney

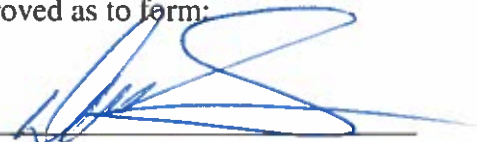
CITY OF LACEY



Scott Spence, City Manager


Date: 4/27/2015

Approved as to form:



David Schneider, City Attorney

CITY OF YELM


Robert Isom, Pro Tem
Robert Isom

Date: 4-28-15

Approved as to form:


P. Stephen DiJulio, Attorney

When recorded return to:

City of Olympia

PO Box 1967

Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY AND YELM
FOR IMPLEMENTING DESCHUTES WATER RIGHTS
MITIGATION STRATEGY – PHASE III**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

Whereas, the Cities of Olympia and Lacey have received approval for water rights from the Department of Ecology and Yelm's application is approved, pending an appeal; and

Whereas, in order to secure approvals of those water rights, the Cities have cooperatively developed a mitigation strategy for the Deschutes River that has been accepted by the Washington Department of Ecology; and

Whereas, by Interlocal Agreement effective November 14, 2007, the Cities completed Phase I of a water rights acquisition strategy by identifying potential water rights for acquisition; and

Whereas, by amended Interlocal Agreement effective January 19, 2010, the Cities have nearly completed Phase II of a water rights acquisition strategy for mitigation purposes by jointly acquiring water rights and property in the Deschutes River basin and developing a habitat restoration assessment for that property; and

Whereas, the cities wish to close out the completion of Phase II and continue implementation of the Deschutes Mitigation Strategy in Phase III by including ongoing management of jointly purchased property; habitat enhancement, planning, design and construction work; and tasks associated with the retirement of acquired water rights for mitigation purposes; and

Whereas, Phase III work includes restoration of 200 acres of farmland jointly purchased by the cities in the Deschutes River watershed. Restoration projects will take place over several years and include: riparian planting along 1 mile of river frontage, stream channel and wetland restoration, and ongoing land management responsibilities; and

Whereas, Phase III also requires the cities to follow through on the process of retiring water rights acquired for mitigation in the Deschutes River watershed; and

Whereas, the cities will begin this Phase III implementation work by fencing the Deschutes River property, developing a 60% design for habitat enhancement work, including construction costs and schedule and hiring a project manager to coordinate and lead this effort; and

Whereas, future implementation work will be accomplished through a separate agreement after design work is completed and construction costs and schedule have been identified through the 60% design process; and

Whereas, the cities may be doing other restoration work on the Deschutes River Farm property not related to this Interlocal Agreement, but through a Memorandum of Understanding (MOU) with the Squaxin Island Tribe signed November 29, 2011. In this MOU the cities have agreed to form the Budd/Deschutes Watershed Environmental Stewardship Coalition and provide additional funding for habitat restoration activities; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cities of Lacey, Olympia and Yelm (Cities) agree as follows:

Purpose/Objective

The Cities have each developed mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister and Yelm sub-basins of the Nisqually River watershed and the Hawks Prairie area of WRIA 13. Within each of these plans, the cities submitted a joint mitigation plan for the Deschutes River Basin to the Washington Department of Ecology (WDOE). The WDOE has issued the Cities of Olympia (CS2-SWC8030, CS2-01105, CS2-SWP10191) and Lacey (ROEs G2-29165, G2-29304, G2-30250, G2-30251, G2-30248, G2-30249) water rights, and has issued the City of Yelm's water rights pending an appeal (ROE G2-29085).

This Agreement will allow the cities to continue with implementation of projects identified in their mitigation plans and meet the conditions of final water right approvals by WDOE.

I. Scope of Agreement/Work

This Agreement provides authority for the City Managers or Mayor of each Party to enter into the necessary agreements to accomplish all tasks necessary for completion of Phase II work, and the initiation of Phase III work. Specific Phase III work accomplished under this agreement will include: contracting for habitat enhancement design services (60% design), project management, land surveying, fence construction, and tasks associated with the retirement of acquired water rights for mitigation purposes.

The Cities agree to jointly engage the services of one or more consultants, organizations, or agencies to assist the Cities in services related to implementation of the Deschutes Mitigation strategy submitted to the WDOE.

The Cities will jointly enter into a professional services agreement with one or more consultants, organizations, or agencies agreed upon by the parties for fence construction, habitat enhancement design, project management, land surveying, and legal analysis and review services as needed.

The Cities will jointly direct the work of the consultant, organization, or agency through a consensus-based decision making process. Consultants will be chosen through the standard selection process for professional services as required by the laws of the State of Washington. The Cities will jointly develop and issue the Request for Qualifications (RFQ) for consulting work and will review the RFQs of submitting firms and will make a unified recommendation for selection of the firm. Once the consultants are selected, the Cities shall coordinate with the consultants to develop a Scopes of Work and Professional Services Agreements amenable to each Party.

This agreement also allows the cities to coordinate on decision-making related to contract management, consultant communication and dissemination of project information to appropriate staff within their own jurisdiction.

The cities may also jointly hire legal counsel on issues related to acquisition of water rights, property management and habitat enhancement for the purpose of mitigation and other related topics. Legal advice provided to the cities jointly shall be considered attorney client privileged not subject to disclosure.

Future implementation work, including construction of the identified mitigation projects, will be accomplished through a separate agreement after 60% design work is completed and the costs and schedule have been established.

II. Implementation Activity Cost Sharing

The Cities will equally contribute to all implementation activities under this Agreement.

III. Consultant Cost Sharing

- a. The Cities will equally divide costs for all services as described in Section 1. Total costs for such services under this agreement are not to exceed \$240,000.00.
- b. Further, this Phase III Agreement ratifies and confirms the expenditures of the Cities in excess of the amount budgeted in the previous Interlocal Agreement covering work under Phase II dated January 19, 2010. The cities will equally divide these costs for the completion of Phase II, which do not to exceed \$10,500.

IV. Method of Payment

- a. Consultants will invoice each City separately on a monthly basis.
- b. Payment will be made separately by each City to the consultants upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

V. Indemnification & Insurance

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

VI. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VII. Duration of Agreement

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

VIII. Dispute Resolution

- a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.
- b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.
- c. Step Three – Arbitration. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

IX. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

X. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

XI. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Cities and supersedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XII. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

XIII. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Liz Hoenig, Senior Planner
Re: Water Rights Mitigation/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

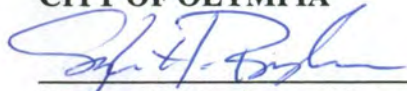
Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Mitigation/Deschutes Basin
420 College St SE
Lacey, WA 98503

CITY OF YELM:

Attn: Shelly Badger, City Administrator
Re: Water Rights Mitigation/Deschutes Basin
105 Yelm Ave. W
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA

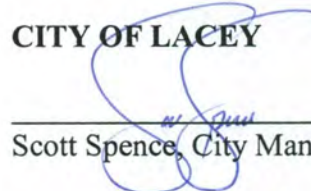


Stephen H. Buxbaum, Mayor

Date:

8/14/12

CITY OF LACEY

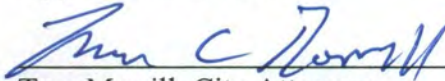


Scott Spence, City Manager

Date:

8/2/12

Approved as to form:



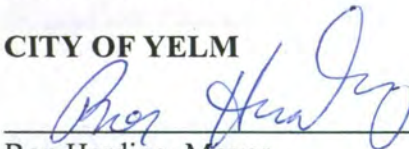
Tom Morrill, City Attorney

Approved as to form:



Ken Ahlf, City Attorney

CITY OF YELM



Ron Harding, Mayor

Date:

8/23/12

Approved as to form:



P. Stephen DiJulio, Attorney

When recorded return to:
City of Olympia
PO Box 1967
Olympia, WA 98507-1967

**AMENDED INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY AND YELM
FOR A WATER RIGHTS ACQUISITION STRATEGY – PHASE II**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

Whereas, the Cities have submitted applications for water rights currently pending at the Dept. of Ecology; and

Whereas, in order to secure approvals of those water rights, the Cities have been making surveys, investigations and studies to support determinations on the water right applications; and

Whereas, the Cities' work in support of these applications has included participation in watershed planning under RCW 90.82, adoption and implementation of the Nisqually Watershed Management Plan, development of an updated groundwater model capable of predicting impacts to surface waters of the various proposed withdrawals, test well drilling, assessments of groundwater conditions, a Phase I Water Rights Acquisition Strategy, and other efforts, and

Whereas, by interlocal agreement effective November 14, 2007, the Cities have completed a water rights acquisition strategy and identified potential water rights for acquisition (Phase I); and

Whereas, the cities wish to expand the scope of the interlocal to include real property acquisition and associated habitat enhancement analysis and planning, and legal analysis and review;

NOW, THEREFORE, that certain Interlocal Agreement between the Cities of Lacey, Olympia and Yelm effective November 14, 2007 is hereby amended to read as follows:

I. Purpose/Objective

The Cities are each developing mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister and Yelm sub-basins of the Nisqually River watershed and the Hawks Prairie area of WRIA 13. As part of a regional approach for water resource management and mitigation within the basin, the Cities wish to pool mitigation efforts. Acquisition of consumptive water rights is one mitigation action currently proposed by the Cities. The purpose of this Agreement is to allow the Cities to contract with an independent consultant to negotiate purchase of water rights within the Deschutes Basin that can be relinquished for mitigation, placed in trust, or put to other beneficial use in furtherance of agreed goals for resource enhancement and mitigations. This agreement also allows the cities to acquire real property and contract for associated habitat enhancement analysis and planning, and legal analysis and review.

II. Scope of Agreement/Work

The Cities agree to jointly engage the services of one or more consultants to assist the Cities in the acquisition of water rights, real property acquisition and associated habitat enhancement analysis and planning, and legal analysis and review to mitigate surface water impacts on the Deschutes River and to assist in transferring such water rights to State Trust or other agreed upon approach for mitigation purposes.

The work is planned in two phases. The first phase, already completed, included tasks necessary for planning the acquisition strategy and identifying water rights for acquisition. The second phase will include implementation of the acquisition strategy by initiating contact with necessary parties and negotiating for acquisition. This Agreement provides authority for the Cities to enter into the necessary professional services agreement(s) to accomplish all tasks necessary for Phase Two. This agreement also allows the cities to enter into Letters of Intent to purchase water rights and real property with final approval required by each city's legislative body.

For Phase Two, the Cities will enter into a professional services agreement with one or more consultants and legal counsel, agreed upon by the parties, for water right, real property, and conservation easement acquisition, associated habitat enhancement analysis and planning, and legal analysis and review services. The consultant will contact water right holders and negotiate purchase of water rights on behalf of the Cities, conduct preliminary site inspections and due diligence on prospective water rights and land purchases and assist with the structure of purchase agreements and documents. The consultant will also conduct due diligence of water rights placed under contract and prepare necessary documentation to submit to the Department of Ecology or Thurston County Conservancy Board for transfer of acquired water rights to State Trust or other agreed upon approach for mitigation purposes. The consultant will also research and develop habitat enhancement plans for acquired properties, and prepare necessary documents to submit to Department of Ecology for mitigation purposes. The cities may also jointly hire legal counsel on issues related to acquisition of water rights, property, and habitat enhancement for the purpose of mitigation and other related topics. To the extent feasible, the Cities intend to target water rights in the upper portion of the watershed first in order to maximize the mitigation benefit for all the Cities. The Cities will jointly direct the work of the consultant/legal counsel through a consensus-based decision making process. Legal advice provided to the cities jointly shall be considered attorney client privileged not subject to disclosure.

The Cities agree that they will not separately pursue purchase of any water rights in the Deschutes Watershed during the term of this Agreement. In the event a City opts out of the acquisition of water rights under this Agreement or terminates its participation in this Agreement, that City agrees not to pursue any water right purchases using the information gathered jointly by the Cities pursuant to this Agreement without the prior written permission of the other cities.

The Cities agree to participate in discussions and development of additional agreements as needed to fulfill the intent of this agreement. Issues that may require additional discussion and agreement may include, but are not limited to, the following: authority to sign applications; authorization of additional technical work, for example, if additional model runs are required; coordination of meetings with the Thurston Water Conservancy Board and/or Ecology; whether and which applications may be "batch processed," or if not batch processed, whether separate applications will be prepared for individual water rights; and the terms and conditions of placement of water rights in trust.

III. Purchase Cost Sharing and Disposition of Acquired Water Rights and/or Land

The Cities will equally divide all water rights and/or land obtained under this Agreement, unless one or more of the Cities elects not to participate, or to participate in an acquisition on a less than equal basis. If any City elects not to participate in an acquisition or to participate on a less than equal basis, the other cities may proceed with the acquisition and equally divide the non-participating City's residual share of water rights for that acquisition amongst the remaining cities. Any City electing to participate on a less than equal basis or electing to opt out of an acquisition will promptly inform the other cities of its decision in writing and will participate in cost sharing for that particular acquisition on a proportionate share basis. The purchase cost share to each City for water rights will be based on a calculation of water rights allocated to that City, measured in acre-feet per year, as a percentage of the total water rights acquired by the Cities as a group. If land is purchased, the purchase cost share to each City will be based on a calculation of acres allocated to that City as a percentage of the total acres acquired by the Cities as a group.

IV. Consultant and Legal Cost Sharing

The Cities will equally divide costs for consultant and legal services. Total costs for such services under Phase Two are not to exceed Two Hundred and Thirty Thousand and 00/100 dollars (\$230,000.00).

V. Method of Payment

- a. The consultant/legal counsel will invoice each City separately on a monthly basis.
- b. Payment will be made separately by each City to the consultant/legal counsel upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

VI. Indemnification & Insurance

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

VII. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VIII. Duration of Agreement

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

IX. Dispute Resolution

a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.

c. Step Three – Litigation. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

X. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

XI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

XII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Cities and supercedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XIII. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

XIV. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Liz Hoenig, Water Supply Planner
Re: Water Rights Acquisition Strategy/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Acquisition Strategy/Deschutes Basin
P.O. Box 3400
Lacey, WA 98509-3400

CITY OF YELM:

Attn: Shelly Badger, City Administrator
Re: Water Rights Acquisition Strategy/Deschutes Basin
P.O. Box 479
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

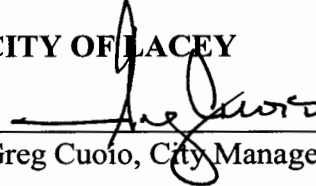
CITY OF OLYMPIA



Doug Mah, Mayor

Date: 1-19-10

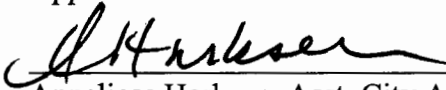
CITY OF LACEY



Greg Cuoio, City Manager

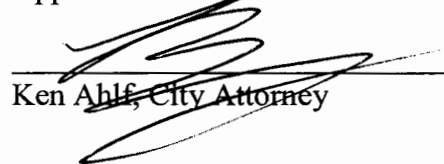
Date: 1-14-10

Approved as to form:



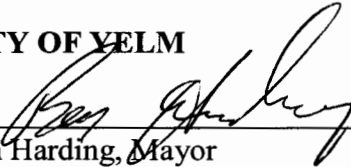
Annaliese Harksen, Asst. City Attorney

Approved as to form:



Ken Ahlf, City Attorney

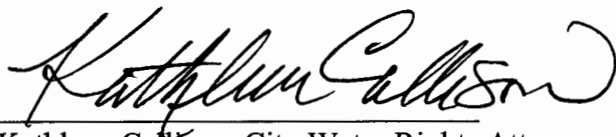
CITY OF YELM



Ron Harding, Mayor

Date: 1-12-2010

Approved as to form:

A handwritten signature in black ink, appearing to read "Kathleen Callison". The signature is fluid and cursive, with a large loop at the end.

Kathleen Callison, City Water Rights Attorney

When recorded return to:
City of Olympia
PO Box 1967
Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY AND YELM
FOR A WATER RIGHTS ACQUISITION STRATEGY – PHASE II**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

Whereas, the Cities have submitted applications for water rights currently pending at the Dept. of Ecology; and

Whereas, in order to secure approvals of those water rights, the Cities have been making surveys, investigations and studies to support determinations on the water right applications; and

Whereas, the Cities' work in support of these applications has included participation in watershed planning under RCW 90.82, adoption and implementation of the Nisqually Watershed Management Plan, development of an updated groundwater model capable of predicting impacts to surface waters of the various proposed withdrawals, test well drilling, assessments of groundwater conditions, a Phase I Water Rights Acquisition Strategy, and other efforts, and

Whereas, by interlocal agreement effective November 14, 2007, the Cities have completed a water rights acquisition strategy and identified potential water rights for acquisition (Phase I);

Interlocal Agreement between the Cities of Lacey, Olympia and Yelm, 2008

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cities of Lacey, Olympia and Yelm (Cities) agree as follows:

I. Purpose/Objective

The Cities are each developing mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister and Yelm sub-basins of the Nisqually River watershed and the Hawks Prairie area of WRIA 13. As part of a regional approach for water resource management and mitigation within the basin, the Cities wish to pool mitigation efforts. Acquisition of consumptive water rights is one mitigation action currently proposed by the Cities. The purpose of this Agreement is to allow the Cities to contract with an independent consultant to negotiate purchase of water rights within the Deschutes Basin that can be relinquished for mitigation, placed in trust, or put to other beneficial use in furtherance of agreed goals for resource enhancement and mitigations.

II. Scope of Agreement/Work

The Cities agree to jointly engage the services of one or more consultants to assist the Cities in the acquisition of water rights to mitigate surface water impacts on the Deschutes River and to assist in transferring such water rights to State Trust or other agreed upon approach for mitigation purposes.

The work is planned in two phases. The first phase, already completed, included tasks necessary for planning the acquisition strategy and identifying water rights for acquisition. The second phase will include implementation of the acquisition strategy by initiating contact with necessary parties and negotiating for acquisition. This Agreement provides authority for the Cities to enter into the necessary professional services agreement to accomplish all tasks necessary for Phase Two.

For Phase Two, the Cities will enter into a professional services agreement with one or more consultants, agreed upon by the parties, for water right acquisition services. The consultant will contact water right holders and negotiate purchase of water rights on behalf of the Cities, conduct preliminary site inspections and due diligence on prospective water rights and assist legal counsel with the structure of purchase agreements and documents. The consultant will also conduct due diligence of water rights placed under contract and prepare necessary documentation to submit to the Department of Ecology or Thurston County Conservancy Board for transfer of acquired water rights to State Trust or other agreed upon approach for mitigation purposes. To the extent feasible, the Cities intend to target water rights in the upper portion of the watershed first in order to maximize the mitigation benefit for all the Cities. The Cities

will jointly direct the work of the consultant through a consensus-based decision making process.

The Cities agree that they will not separately pursue purchase of any water rights in the Deschutes Watershed during the term of this Agreement. In the event a City opts out of the acquisition of water rights under this Agreement or terminates its participation in this Agreement, that City agrees not to pursue any water right purchases using the information gathered jointly by the Cities pursuant to this Agreement without the prior written permission of the other cities.

The Cities agree to participate in discussions and development of additional agreements as needed to fulfill the intent of this agreement. Issues that may require additional discussion and agreement may include, but are not limited to, the following: authority to sign applications; authorization of additional technical work, for example, if additional model runs are required; coordination of meetings with the Thurston Water Conservancy Board and/or Ecology; whether and which applications may be "batch processed," or if not batch processed, whether separate applications will be prepared for individual water rights; and the terms and conditions of placement of water rights in trust.

III. Disposition of Acquired Water Rights

The Cities will equally divide all water rights obtained under this Agreement, unless one or more of the Cities elects not to participate, or to participate in an acquisition on a less than equal basis. If any City elects not to participate in an acquisition or to participate on a less than equal basis, the other cities may proceed with the acquisition and equally divide the non-participating City's residual share of water rights for that acquisition amongst the remaining cities. Any City electing to participate on a less than equal basis or electing to opt out of an acquisition will promptly inform the other cities of its decision in writing and will participate in cost sharing for that particular acquisition on a proportionate share basis. The cost share to each City will be based on a calculation of water rights allocated to that City, measured in acre-feet per year, as a percentage of the total water rights acquired by the Cities as a group.

IV. Payment (or Funding/Costs/etc.)

The Cities will equally divide costs. Total costs for consulting services under Phase Two are not to exceed Eighty Thousand and 00/100 dollars (\$80,000.00).

V. Method of Payment

- a. The consultant will invoice each City separately on a monthly basis.

b. Payment will be made separately by each City to the consultant upon receipt of an acceptable invoice, after completion of each task agreed upon in the professional services agreement.

VI. Indemnification & Insurance

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

VII. No Separate Entity Created

This Agreement creates no Joint Board and no separate legal entity.

VIII. Duration of Agreement

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

IX. Dispute Resolution

a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to adjust their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

b. Step Two – Mediation. If the dispute has not been resolved by negotiation within ninety (90) days of the initial letter proposing negotiation, any Party may demand mediation. The mediator shall be chosen by agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Parties may proceed to litigation.

c. Step Three – Litigation. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Party may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened.

X. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

XI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

XII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Cities and supercedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XIII. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

XIV. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Donna Freier, Program and Planning Supervisor
Re: Water Rights Acquisition Strategy/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Acquisition Strategy/Deschutes Basin
P.O. Box 3400
Lacey, WA 98509-3400

CITY OF YELM:

Attn: Shelly Badger, City Administrator
Re: Water Rights Acquisition Strategy/Deschutes Basin
P.O. Box 479
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA



Doug Mah, Mayor

Date: 8-12-08

Approved as to form:



Annaliese Harsen, Asst. City Attorney

CITY OF LACEY



Greg Capio, City Manager

Date: 7-29-08

Approved as to form:



Ken Ahlf, City Attorney

CITY OF YELM

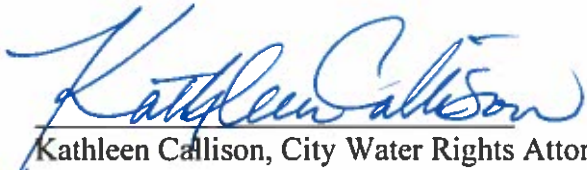


Ron Harding, Mayor

Date: _____

8/11/08

Approved as to form:



Kathleen Callison, City Water Rights Attorney

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY AND YELM
FOR A WATER RIGHTS ACQUISITION STRATEGY**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cities of Lacey, Olympia and Yelm (Cities) agree as follows:

I. Purpose/Objective

The Cities are each developing mitigation plans to offset potential surface water impacts to the Deschutes River from groundwater withdrawals from the McAllister sub-basin of the Nisqually River watershed. As part of a regional approach for water resource management and mitigation within the basin, the Cities wish to pool mitigation efforts. Acquisition of consumptive water rights is one mitigation action currently proposed by the Cities. The purpose of this Agreement is to allow the Cities to contract with an independent consultant to identify potential water rights for acquisition within the

Deschutes Basin that can be relinquished for mitigation, placed in trust, or put to other beneficial use in furtherance of agreed goals for resource enhancement and mitigations.

II. Scope of Agreement/Work

The Cities agree to jointly engage the services of one or more consultants to assist the Cities in planning for the acquisition of water rights to mitigate surface water impacts on the Deschutes River and to assist in acquiring such water rights.

The work is currently planned in two phases. The first phase will include tasks necessary for planning the acquisition strategy and identifying water rights for acquisition. The second phase will include implementation of the acquisition strategy by initiating contact with necessary parties and negotiating for acquisition. This Agreement provides authority for the Cities to enter into the necessary professional services agreement to accomplish all tasks necessary for Phase One.

For Phase One, the Cities will enter into a professional services agreement with Westwater Research. Westwater Research will research and identify surface or groundwater rights that can be acquired and retired, placed in trust or otherwise reallocated to mitigate for modeled impacts to surface water bodies in the Deschutes River watershed, from new points of withdrawal proposed by each city. All reports will be provided to each city independently, however, the Cities shall have equal access to any reports generated by Westwater Research or any consultant regarding this project. Westwater Research will deliver draft results to each of the three cities for initial review, and comments from the Cities will be accepted and incorporated into a final report. The parties expect that all information obtained will be shared only amongst the Cities, except as otherwise required by law.

The Cities agree that none of the water rights identified under the scope of this project will be purchased or acquired by any of the Cities, either individually or as part of a group, prior to separate agreement by the Cities setting forth the process for: (1). Obtaining further research and analysis of water rights; (2). Deciding which water rights to acquire; (3). Acquiring the selected water rights; (4). Disposition of acquired water rights; and (5). Apportioning interests among the jurisdictions in water rights or benefits derived from the acquired water rights.

III. Payment (or Funding/Costs/etc.)

The Cities will equally divide costs. Total costs for Phase One are not to exceed forty one thousand eight hundred and twenty and 00/100 dollars (\$41,820.00).

IV. Method of Payment

A. The consultant will invoice each City separately on a monthly basis.

B. Payment will be made separately by each City to the consultant upon receipt of an acceptable invoice, after completion of each tasks agreed upon in the professional services agreement.

V. Indemnification & Insurance

Each City agrees to defend, indemnify and hold the other cities, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the indemnifying City's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying City's officers, officials and employees.

VI. No Separate Entity Created

This Agreement creates no Joint Board and no separate legal entity.

VII. Duration of Agreement

This Agreement shall be effective on the date of the last signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Cities as provided herein.

VIII. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

IX. Interpretation and Venue

A. This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of any provisions shall be the Superior Court of Thurston County.

X. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Cities and supercedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XI. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

XII. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Tikva Glantz, Program and Planning Supervisor
Re: Water Rights Acquisition Strategy/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:


Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Acquisition Strategy/Deschutes Basin
P.O. Box 3400
Lacey, WA 98509-3400

CITY OF YELM:

Attn: Shelly Badger, City Administrator
Re: Water Rights Acquisition Strategy/Deschutes Basin
P.O. Box 479
Yelm, WA 98597

This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA



~~Steve Hall, City Manager~~
Mark Foutch, Mayor

Date: 11-5-07

Approved as to form:



Annaliese Harsen, Asst. City Attorney

CITY OF LACEY



Greg Cuoio, City Manager

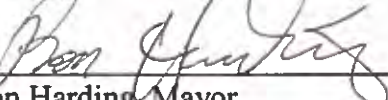
Date: 10-25-07

Approved as to form:



Ken Ahlf, City Attorney


CITY OF YELM



Ron Harding, Mayor

Date: Nov. 14, 2007

Approved as to form:



Kathleen Callison, City Water Rights Attorney